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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/896,211

06/29/2001

Marcel F.C. Schemmann

US010299

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07/27/2005

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

CURS, NATHAN M

ART UNIT

PAPER NUMBER

2633

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/896,211	Applicant(s) SCHEMMANN ET AL.	
	Examiner Nathan Curs	Art Unit 2633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: 36, 37 and 39.
 Claim(s) rejected: 1-35, 38 and 40-42.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
The applicant's arguments against, for example, independent claims 1, 17, 33, 35, 41 and 42 are not persuasive. The applicant argues that "the rejection contained within the Final Office Action alleges that Levinson discloses the subject matter defined by [the rejected claim], except that the Examiner admits that Levinson does not disclose that the input signal is an RF signal". However, this is not a persuasive argument by the applicant. It sounds like the applicant is arguing that the rejections allege complete anticipation by Levinson except that the examiner admits a lack of anticipation. If this is the meaning of the argument, the applicant misunderstands the rejection. The corresponding rejections contained within the Final Office Action state that the subject matter of the corresponding claims is not patentable over Levinson; the rejections do not state that the subject matter is completely anticipated by Levinson. The applicant simply referring to the examiner's prior statement from within the obviousness rejection, that Levinson does not explicitly disclose that the input signal is an RF signal, is not a persuasive argument against the obviousness rejection. Further, the applicant argues that the Final Office Action does not address the subject matter for the transmitter feedback loops including "an RF level derived from a back facet feedback signal". On the contrary, the Final Office action points out that Levinson discloses a level derived from a back facet feedback signal depending on the optical signal (Levinson: fig. 3, elements 100 and 116 and col. 3, lines 4-12 and col. 4, lines 10-12, lines 33-37 and line 56 to col. 5, line 18), the transmitter feedback loops including a signal level derived from a back facet feedback signal (Levinson: fig. 3, element 116), and states that it would have been obvious to one of ordinary skill in the art at the time of the invention that the input signal would be an RF signal. In Levinson, if the input signal were an RF signal, the optical signal and thus the back facet feedback signal would both inherently be RF signals as a result.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-303 (Rev. 4-05)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20050722


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